

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLAY LYNDON WYANT,

Plaintiff,

v.

CHELAN COUNTY; BRYAN JONES,
his capacity as a police
officer for Chelan County and
as an individual; CURTIS
VARNER, in his capacity as a
police officer for Chelan
County and as an individual;
and LEIGH FERGUSON, in his
capacity as a police officer
for Chelan County and as an
individual,

Defendants.

NO. CV-08-0196-EFS

**ORDER DENYING MOTION TO AMEND
COURT SCHEDULE AND GRANTING
AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

Before the Court, without oral argument, is Plaintiff Clay Lyndon Wyant's Motion to Amend Court Schedule (Ct. Rec. [61](#)), which requests that the Court continue the April 16, 2010 discovery cutoff to July or August 16, 2010. Defendants oppose the request. Upon review and for the reasons given below, the Court denies Plaintiff's request. Also, before the Court, is Defendants' Motion for Summary Judgment (Ct. Rec. [51](#)). The Court grants and denies in part Defendants' motion for the reasons set forth below.

1 On June 20, 2008, Plaintiff, through counsel, filed the Complaint,
2 which asserts malicious prosecution, negligence, and 42 U.S.C. § 1983
3 wrongful arrest and excessive force claims. (Ct. Rec. [1](#).) A Scheduling
4 Order was entered on March 6, 2009, setting an October 23, 2009 discovery
5 deadline and a March 22, 2010 trial. (Ct. Rec. [14](#).) On October 14,
6 2009, the Court granted Defendants' Motion to Extend Discovery Cutoff
7 because Defendants were having difficulty scheduling Plaintiff's
8 deposition given that he was in state custody and was being transferred
9 between facilities; the discovery deadline was extended to November 6,
10 2009. (Ct. Rec. 24.) Thereafter, on November 16, 2009, the Court
11 granted Plaintiff's request to permit counsel to withdraw, finding that
12 an irreconcilable conflict existed between Plaintiff and counsel. (Ct.
13 Rec. [47](#).) The Court stayed the case until January 19, 2010, to provide
14 Plaintiff with an opportunity to retain new counsel. *Id.* On December
15 29, 2009, Plaintiff filed a motion seeking appointment of counsel (Ct.
16 Rec. [48](#)); on December 30, 2009, the Court denied this request. (Ct. Rec.
17 [49](#)).

18 On January 19, 2010, the Court held a status conference; Plaintiff
19 failed to participate. (Ct. Rec. [50](#).) Thereafter, a revised Scheduling
20 Order was entered setting an October 25, 2010 trial. (Ct. Rec. [57](#).) On
21 February 3, 2010, Plaintiff asked the Court to reset the trial to late
22 April or May 2010 to provide him with an opportunity to transcribe a
23 state court audiotape. (Ct. Rec. [58](#).) The Court denied Plaintiff's
24 trial continuance request given that the March 2010 trial had already
25 been continued to October 2010. (Ct. Rec. [59](#).) The Court, however,
26

1 extended the discovery deadline to April 16, 2010. *Id.* The Court warned
2 Plaintiff that it would not extend the discovery period further. *Id.*

3 On March 31, 2010, Plaintiff filed his instant request to extend the
4 discovery deadline to July or August 16, 2010. (Ct. Recs. [61](#), [62](#), [63](#),
5 & [65](#).) Plaintiff submits the previously-granted discovery extension to
6 April 16, 2010 is unhelpful because he is incarcerated. Notwithstanding
7 Plaintiff's incarceration, the Court deems a discovery-deadline extension
8 is unwarranted. The discovery deadline has already been extended
9 approximately six months due to Plaintiff's incarceration. There was
10 sufficient time both for Plaintiff's counsel to obtain the transcript of
11 the recording prior to counsel's withdrawal and also for Plaintiff to
12 obtain the transcript himself, even while incarcerated.¹ Furthermore,
13 Plaintiff had been cautioned that no further extensions would be granted,
14 and Defendants have the right to have the claims against them resolved.
15 Under these circumstances, the Court denies Plaintiff's extension
16 request. The Court turns to Defendants' summary judgment motion.

17 Defendants seek summary judgment on Plaintiff's 42 U.S.C. § 1983
18 wrongful arrest and excessive force, malicious prosecution, and general
19 negligence claims because 1) the Complaint admits that Plaintiff was
20 convicted of a crime for which he was arrested and 2) Plaintiff testified
21 at his deposition that the force used was not excessive. Plaintiff
22 failed to oppose Defendants' motion. A failure to file a memorandum in
23 opposition may be considered as consent to entry of an order adverse to

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25 ¹ The Court has had a number of pro se individuals pursue their
26 civil lawsuits while incarcerated, including one who litigated his civil
claims at trial.

1 the non-responding party. LR 7.1(b). Also, because Plaintiff failed to
2 challenge Defendants' Statement of Undisputed Facts (Ct. Rec. [53](#)), the
3 Court assumes the facts to exist as claimed by Defendants. LR 56.1(d).

4 The facts before the Court are brief: On April 22, 2005, Plaintiff
5 was arrested by Defendants for resisting arrest and criminal trespass.
6 Plaintiff testified that the arresting officers did not use excessive
7 force when they arrested him. Plaintiff was convicted of criminal
8 trespass and unsuccessfully appealed the conviction. There are no facts
9 relating to the disposition of the resisting arrest charge; a charge
10 which Plaintiff alleges in his Complaint ended in his favor on June 2,
11 2006.

12 Because Plaintiff testified that he was not a victim of excessive
13 force, the Court grants Defendants summary judgment on Plaintiff's 42
14 U.S.C. § 1983 excessive force claim. (Ct. Rec. [54](#)-2 113:5 - 114:5.)
15 Furthermore, Plaintiff may not pursue either his malicious prosecution
16 or 42 U.S.C. § 1983 wrongful arrest claims, as they relate to the
17 criminal trespass arrest and conviction, because these claims necessarily
18 imply the invalidity of the criminal trespass conviction. *See Heck v.*
19 *Humphrey*, 512 U.S. 477 (1994); *Harvey v. Waldron*, 210 F.3d 1008, 1013
20 (9th Cir. 2000); *see also Fondren v. Klickitat County*, 79 Wn. App. 850,
21 858 (1995). Likewise, Chelan County is granted summary judgment on
22 Plaintiff's claim asserting municipal liability relating to his arrest
23 and prosecution for criminal trespass. Furthermore, to the extent
24 Plaintiff's negligence claim relates to his criminal trespass arrest and
25 conviction, this claim is dismissed. Yet, there are no facts to support
26 entry of summary judgment in Defendants' favor as to Plaintiffs' § 1983

1 wrongful arrest, malicious prosecution, and negligence claims as they
2 relate to the dismissed resisting arrest charge.

3 For these reasons, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion to Amend Court Scheduling (Ct. Rec. [61](#)) is
5 **DENIED.**

6 2. Defendants' Motion for Summary Judgment (Ct. Rec. [51](#)) is
7 **GRANTED** (42 U.S.C. § 1983 excessive force claim; all claims relating to
8 criminal trespass arrest and prosecution) **and DENIED** (claims relating to
9 resisting arrest charge) **IN PART.**

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter
11 this Order and to provide copies to Plaintiff and counsel.

12 **DATED** this 16th day of April 2010.

13
14 S/ Edward F. Shea
15 EDWARD F. SHEA
United States District Judge

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